

**DECISION OF THE CERTIFICATION OFFICER ON AN APPLICATION  
MADE UNDER SECTION 108A(1) OF THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 1992**

**Ms D DENNISON**

**v**

**UNISON**

**Date of Decision:**

**15 April 2003**

**DECISION**

Upon application by the Applicant under section 108A(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”) for a declaration that UNISON (“the Union”) acted in breach of its rules:-

1. I make a declaration that UNISON breached section I of its rules in suspending the Applicant’s legal assistance for the period 11 October 2001 to 14 May 2002.
2. I do not consider it appropriate to make an enforcement order.

**REASONS**

1. Ms Dennison made a complaint to me against her Union, UNISON (“the Union”) on 16 October 2002 alleging a breach of the rules of the Union in respect of disciplinary proceedings. This is a matter which is potentially within

the jurisdiction of the Certification Officer by virtue of sections 108A(2)(b) of the 1992 Act. The alleged breach, as clarified at the hearing, is that:-

*In breach of UNISON rule 1.8 a disciplinary penalty was imposed on Ms Dennison which consisted of the suspension of her legal assistance from the union between 11 October 2001 and 14 May 2002.*

2. I investigated this matter in correspondence. As required by section 108B(2) of the 1992 Act, the parties were offered the opportunity of a formal hearing and such a hearing took place on 20 March 2003. The Union was represented by Mr Anthony White QC. Ms H Knott, Legal Officer of the Union was in attendance. Mr E Roberts, Branch Secretary, Mr P Thompson, Regional Organiser and Mr C Remington, Head of Constitutional Matters, gave evidence for the Union. Ms Dennison acted in person and gave evidence. A bundle of documents was prepared for the hearing by my Office which consisted of relevant exchanges of correspondence with the parties, together with their enclosures. This decision has been reached on the basis of the representations made by the Union, together with such documents as were provided by both the Applicant and the Union.

### **Findings of Fact**

3. Having considered the representations made to me and the documents to which I was referred I make the following findings of fact:-
4. UNISON and its predecessors have traditionally organised from amongst ambulance workers. In or about 1999 certain branch officers of UNISON in the Merseyside area broke away to establish a rival union, the Ambulance Service Union (“ASU”). There were allegations that property of the Union was wrongly transferred to the ASU and emotions ran high.
5. Union members who are ambulance workers in London are organised in the London Ambulance Service (“LAS”) Branch. This branch has about 2,500 members and since about 1986 its Branch Secretary has been Mr Eric Roberts.

Mr Roberts has been in the ambulance service for 29 years and chairs the Union's National Ambulance Sector Committee.

6. Mr Roberts gave evidence that the ASU became active in the London area in about 2001 and that in April 2001 he was instructed by his Branch Committee to investigate its activities. Mr Roberts stated that the ASU were spreading lies and misinformation about the Union and were seeking to encourage its members to join the breakaway. Mr Roberts took a strong line against the ASU both locally and nationally. He was described by Mr Remington as becoming its "*hate figure*", its "*bête noir*" and the person against whom the ASU had pursued "*a vendetta*". Mr Roberts gave evidence of e-mails, letters and posters circulated on behalf of the ASU in London which attacked him personally. He was described as, "*Red Eric*", as having used the Union's money for his own purposes and for not looking after the interests of the London ambulance workers. Mr Roberts stated that these false allegations were not only damaging to him but also deeply upsetting.
7. Mr Roberts' investigations caused him to believe that the activities of the ASU in London centred on a group of ambulance workers based at the Shoreditch station, where the Applicant worked. He had been told by people at the Shoreditch station and other stations in the area that the Applicant was part of this group. Although Mr Roberts had no supporting documentary evidence and no one was prepared to go on the record, he was convinced that the Applicant was part of the group which was promoting the ASU and publishing insulting material about both the Union and himself.
8. On the 5 April 2001 the Applicant sustained injuries in a road traffic accident whilst at work. She immediately made an application to her Union for legal assistance to make a claim for damages.
9. There are two ways in which the Union permits an application for legal assistance to be made. The injured member may submit a form, duly completed, to his or her Branch Secretary who will then check whether the

member has been a fully paid up member for at least 13 weeks before the incident. If so, the Branch Secretary will certify to this effect on the form. The form is then sent to the Union's Membership Legal Services Unit at Head Office. Alternatively, the member may contact UNISONdirect, the Union's call centre, and give the necessary details. UNISONdirect checks the applicant's membership status on the Union's computer and, if appropriate, forwards the application to the solicitors, Messrs Thompsons. In due course the solicitors write to the Branch Secretary to advise that they have been instructed and ask if the branch has any reason to believe that the member does not qualify for legal assistance. If the branch considers that the member does not qualify, it should contact the Membership Legal Services Unit at Head Office which will investigate and a decision on legal assistance will be taken by the National Executive Council ("NEC") or its delegate.

10. The Applicant made an early application to UNISONdirect and Thompsons acknowledged receipt of her claim by a letter dated 9 April 2001. On 28 August 2001 Thompsons wrote to the Applicant informing her that liability had been admitted on behalf of the proposed defendant.
11. It was not until 8 October 2001 that Mr Roberts received the routine letter from Thompsons advising him that they had received a claim from Ms Dennison and asking him if she qualified for legal assistance. Mr Roberts said in evidence that when he received this letter he was outraged that the Applicant was receiving legal assistance. He was aware that another member of the Shoreditch station who was suspected of being a member or supporter of the ASU had obtained damages for personal injuries and had left the Union shortly thereafter. Mr Roberts decided that the Applicant's legal assistance should be suspended immediately, pending the completion of his investigations into the ASU. He anticipated that these investigations would secure sufficient evidence to instigate disciplinary proceedings against the Applicant under section I of the rules and that the disciplinary proceedings would lead to the Applicant's expulsion. Mr Roberts contacted his full-time Regional Organiser, Phil Thompson. He advised him of the situation and what

he wanted done about it. Mr Thompson telephoned the solicitors on 11 October 2001 and instructed them to put the Applicant's case on hold as there was a problem with her eligibility for legal assistance. The solicitors took no further steps in the Applicant's personal injury case until about 14 May 2002. The Applicant had been given an appointment to be medically examined on 22 October 2001 but this was cancelled on the grounds that the date was no longer suitable to the doctor.

12. Neither the Union nor its solicitors initiated any contact with the Applicant to inform her that her legal assistance had been suspended. On or about 6 February 2002 the Applicant telephoned the solicitors to find out when her rearranged medical examination would take place. To her astonishment, she was told that her claim had been put on hold. She was not given any explanation for this. The Applicant immediately telephoned her Branch Secretary Mr Roberts and by letter dated 12 February he informed the Applicant that, *"We have asked the solicitor to temporarily stop from proceeding any further until we seek advice regarding entitlement to legal assistance under UNISON Rules. You will be written to again within the next week or two"*.
13. On 19 March 2002 Mr Roberts reported the Applicant's suspension from legal assistance to his Branch Committee. Anticipating that in due course disciplinary action would be taken against the Applicant under the rules, the Branch Committee elected a three person disciplinary panel. This panel was specifically elected to deal with the case which Mr Roberts envisaged would be brought against the Applicant. On 20 March Mr Roberts wrote to the Applicant in the following terms:-

*"It has been brought to the attention of the LAS Branch Committee of 19 March 2002 that you hold joint membership of UNISON and Ambulance Service Union. I am writing to ascertain that this is correct as the aims and objectives of the ASU contradict and bring into disrepute the aims and objectives of UNISON."*

*Would you please confirm, in writing, no later than 4 April 2002 that you are either:*

- (a) only a member of UNISON;*
- (b) no longer a member of UNISON;*
- (c) only a member of ASU;*
- (d) no longer a member of ASU.*

*The LAS Branch Committee meeting of 19 March views activities which undermine the aims and objectives of UNISON as extremely serious and such activities may be addressed under rule I (Disciplinary Action)."*

14. On 12 April 2002 Mr Remington responded to a letter of complaint that the Applicant had sent to the General Secretary. Mr Remington commented that he was not prepared to accept the Applicant's complaint until matters were clarified, *"As the subject matter that Mr Roberts wrote to you on may result in a disciplinary investigation under Rule I against you, ..."*.
15. The Applicant responded to Mr Roberts' letter of 20 March 2002 by an undated letter which he received on 17 April. Selecting from the list of options in Mr Roberts' letter, she stated, *"I am '(a) Only member of UNISON' "*.
16. Mr Roberts considered that he could take no action on this letter until he had reported to the next meeting of the Branch Committee. This took place on 13 May 2002. Mr Roberts reported to the Branch Committee on the outcome of his investigations. He had been unable to come up with any firm evidence to confirm his strong belief in the Applicant's misconduct. The committee agreed that Mr Roberts should authorise the solicitors to recommence the Applicant's legal case and the Disciplinary Panel was stood down. On 14 May Mr Roberts wrote to the Applicant advising her that he had that day written to the solicitors, *"...authorising them to recommence their legal representations and to conclude your case"*.

### **The Relevant Statutory Provisions**

17. The provisions of the 1992 Act which are relevant for the purpose of this application are as follows:-

“108A.-(1) A person who claims that there has been a breach or threatened breach of the rules of a trade union relating to any of the matters mentioned in subsection (2) may apply to the Certification Officer for a declaration to that effect, subject to subsections (3) to (7).

(2) The matters are -

- (a) ...;
- (b) disciplinary proceedings by the union (including expulsion);
- (c) ...;
- (d) ...;
- (e) ...”

18. Section 108B(2) of the 1992 Act empowers me to make such enquiries as I think fit and, after giving the Applicant and the Union an opportunity to be heard, provides that I may make or refuse to make the declaration asked for. I am required, whether I make or refuse the declaration sought, to give reasons for my decision in writing.

19. Section 108B(3) of the 1992 Act requires that where I make a declaration I shall also, unless I consider that to do so would be inappropriate, make an enforcement order requiring, inter alia, the Union to take such steps to remedy the breach as may be specified in the order.

## **The Union Rules**

20. The Union rules most relevant to the Applicant’s complaints are:-

### **Rule I: *Disciplinary action***

5.1 “Where there appear to be reasonable grounds to think that a member might be guilty of a disciplinary offence,

1 the member’s Branch Committee or Service Group Executive will investigate whether the charges are justified:

2 the National Executive Council may appoint any of its number, or the General Secretary, to investigate whether the charges are justified.”

5.3 “In any case, the body on whose behalf an investigation is undertaken shall consider the result of such investigation before deciding whether or not a charge should be brought.”

7.1 “a disciplinary charge brought by a branch shall first be heard by its Disciplinary Sub-Committee unless the member belongs to the Branch Committee in which case it shall first be heard by a Disciplinary Sub-Committee of the National Executive Council”

- 8 “Where a disciplinary charge is proved against a member, any of the following penalties may be imposed:

By the Branch

- (1) censure of the member;
- (2) debarring the member from attending any branch meeting for a period not exceeding 24 months;
- (3) referral of the matter to the National Executive Council for consideration of a more serious penalty including suspension or expulsion;

By the National Executive Council

- (4) debarring the member from holding any Union office for whatever period seems to it to be appropriate;
- (5) suspension of the member from all or any benefits of membership for whatever period seems to it to be appropriate;
- (6) expulsion of the member from the Union.”

**Rule K: *Legal assistance***

- 1.1 “The National Executive Council shall have the power in its absolute discretion to grant legal assistance to members who qualify under Rule K2 below.....”
- 1.6 “In all cases the National Executive Council has absolute discretion as to whether or not to grant, continue or withdraw legal assistance. The National Executive Council shall have the power to delegate, continue or withdraw legal assistance to the relevant committee under Rule D.2.7 or to a lay or full time officer of the Union.”

**Qualifications**

- 2 “The following shall apply:
- (i) -
  - (ii) -
  - (iii) The National Executive Council of the relevant committee, lay or full time officer to whom the power to grant legal assistance has been delegated may in its absolute discretion grant legal assistance....
- 3 The member seeking legal assistance shall seek assistance in a manner prescribed by the National Executive Council.
- 4 The member is not entitled to assume that her/his application for legal assistance is effective until this is determined in writing by the Union.
- 6 Every grant of assistance shall be on the understanding that the National Executive Council in its discretion may withdraw legal assistance if the member does not follow the advice of the Union or its appointed solicitors, fails to pay contributions or if in its view the continuance of legal assistance is unreasonable. The National Executive Council may, in determining whether or not to continue legal assistance, take into account the policy of the Union.
- 7 The Union shall not be accountable for any costs, charges or other payments in connection with legal assistance.....without the consent of the National Executive Council.”

***Schedule D: Disciplinary Procedures***

- 24 “Any penalty imposed on a member will not take effect until the expiry of the time limit within which the member can submit an appeal or, if an appeal has been submitted, until such time as the appeal has been determined.”



## The Submissions

21. Ms Dennison argued that the Union’s decision to suspend her legal assistance was disciplinary action taken against her other than in accordance with the disciplinary procedures contained in section I of the rules. She noted that one of the penalties which the NEC may impose by paragraph 8.5 of section I is, “*suspension of the member from all or any of the benefits of membership for whatever period seems to it to be appropriate*”. The Applicant submitted that she had been in effect subjected to such a disciplinary penalty without a charge having been put to her or an opportunity to put her side of the case. The Applicant was also very critical of the Union’s failure to inform her that her legal assistance had been suspended and of the manner in which the Union had dealt with both her enquiries into why her legal assistance had been suspended and her subsequent complaints.
  
22. Mr White QC, for the Union, submitted that this complaint fell outside the jurisdiction of the Certification Officer and, in the alternative, that the alleged breach of rule I.8 of the rules of the Union had not been made out. He argued that the Applicant had failed to establish that her complaint related to, “*...disciplinary proceedings by the Union (including expulsion)*” and that accordingly it was not a matter which fell within section 108A(2) of the 1992 Act. He argued that the putting on hold of the Applicant’s legal assistance had not been carried out under the Union’s disciplinary rules and that, on any proper analysis, all that had happened was that a discretionary benefit under section K of the rules, namely the grant of legal assistance, had been temporarily put on hold whilst an investigation was undertaken. Accordingly, in Mr White’s submission, this case concerned the application of section K of the rules to the Applicant and not section I. Section K gives a broad discretion to the NEC (or its delegate) to grant or withdraw legal assistance and, as such, falls outside any of those subject matters over which the Certification Officer has jurisdiction. Mr White accepted that neither Mr Roberts nor Mr Thompson had been given delegated powers under section K to suspend or withdraw legal assistance but argued that this went to a possible breach of section K

(about which the Union made no admissions) and was a matter outside my jurisdiction. In the alternative, Mr White described the Applicant's allegation that she had disciplinary action taken against her of a type permitted by paragraph 8.5 of section I of the rules as being wholly artificial. Referring to the terms of paragraph 8.5, he accepted that legal assistance was a benefit of membership but noted that the action complained of was not taken by the NEC and that the interruption of her legal assistance was not for a specified period. He also argued that the Applicant's legal assistance was not suspended, in the sense that it had not been withdrawn, but was put on hold pending the outcome of the investigation into her eligibility. Mr White further argued that the action of Mr Roberts was consistent with his duty as a Branch Secretary under paragraph 4.2.4 of section G of the rules to ensure that the Branch observes the Union rules. In counsel's submission, the action taken in relation to the Applicant's legal assistance was not taken to punish her or by way of a disciplinary penalty. It was taken to preserve the Union's position whilst her entitlement to legal assistance was investigated.

## **Conclusions**

23. Section 108A(2)(b) of the 1992 Act confers jurisdiction upon the Certification Officer to consider allegations of breach of rule which relate to, "*...disciplinary proceedings by the union (including expulsion)*". Most cases under this head concern allegations that the disciplinary procedures of the union have been wrongly applied. However, in my judgement, section 108A(2)(b) does not restrict my jurisdiction under this head to considering only cases which arise in this way. In *Ryan v UNISON* (D/45-48/01), decided on 4 April 2001, Mr Whybrew, my predecessor, held that Ms Ryan's exclusion from branch meetings without reference to the disciplinary procedures of the Union fell within the jurisdiction of the Certification Officer. In paragraph 2.11 of that decision he stated:-

*"The action taken against Ms Ryan was punitive and a penalty of a nature mentioned in rule I.8 was imposed. It clearly subjected Ms Ryan to action that was, in its very nature, one of discipline and, therefore, falls within my jurisdiction. I cannot accept the argument that an action which is mentioned in the rules only as a disciplinary*

*penalty, can be legitimised and taken out of my jurisdiction by the claim that it was not a disciplinary penalty because the disciplinary rules and procedures had not been invoked.”*

I respectfully agree with Mr Whybrew’s conclusion. In my judgement, the scope of the Certification Officer’s jurisdiction under section 108A(2)(b) is a matter of substance not form. The statutory provision refers to breaches of rule which relate to disciplinary proceedings. This is a broad formulation which I find does not restrict my jurisdiction to considering only breaches of those rules which deal expressly with disciplinary proceedings. It cannot have been the intention of Parliament to confer jurisdiction on the Certification Officer when a union has imposed a penalty on a member in breach of its disciplinary rules but not to confer jurisdiction when, in similar circumstances, a union has totally ignored its disciplinary rules. Mr White did not seek to argue that the Ryan case was wrongly decided but to distinguish it on its facts. He described the Ryan case as being a decision at the edge of the jurisdiction of the Certification Officer and one which should therefore be treated with care. I do not dissent from the proposition that my jurisdiction under section 108A(2)(b) of the 1992 Act must be examined with particular care in those cases which do not involve an allegation of a breach of a rule that deals expressly with discipline.

24. Union rules frequently provide for a decision to be taken which may disadvantage a member or a group of members. The provision of legal assistance is perhaps the prime example of such a rule. There can be many good reasons for a union not granting or for discontinuing legal assistance and union’s typically give themselves a broad discretion to determine how members’ money should best be spent. When a discretion under such a rule is properly exercised to the disadvantage of a member or group of members it would normally be wholly artificial for a member to make a claim to the Certification Officer based on section 108A(2)(b) that the union had failed to comply with its disciplinary procedures. Even when the disadvantage arises as a result of an alleged breach of the rule relating to the grant of legal assistance, there can be no assumption that it is a breach which relates to disciplinary

proceedings. The more usual analysis in these circumstances is that there has been a breach of a rule outside the scope of the Certification Officer's jurisdiction under section 108A(1) and (2) and that any legal action on the alleged breach would have to be commenced in the courts.

25. Turning to the facts of this case, I observe that under section K of the rules the NEC or its delegate has a broad discretion to grant, continue or withdraw legal assistance and I accept Mr White's submission that these words comprehend an implied power to suspend. Whilst I have no jurisdiction to determine breaches of rule outside the categories provided for in section 108A(2), I consider the fact that the Applicant's legal assistance was not lawfully suspended under the rules is relevant background material and that it opens the gate, in the words of Mr White, for a consideration of the true nature of the action taken against the Applicant. I must ask myself whether this is one of those exceptional cases in which the action taken against a member, which could have been taken lawfully under a non-disciplinary rule, was nevertheless taken for a disciplinary purpose in breach of the rules which relate to disciplinary proceedings.
- 26 In this connection I find that it was Mr Roberts who decided upon the Applicant's suspension of legal benefit. Although Mr Roberts correctly involved his full-time Regional Organiser, Mr Thompson, in order to give instructions to the Union's solicitors, I find that Mr Thompson did not separately address his mind to the merits of the suspension or its potential length. He accepted what he had been told by Mr Roberts and the limit of Mr Thompson's personal intervention was to clarify with the solicitors whether it would cause them any difficulty to suspend the Applicant's legal assistance. I find that Mr Thompson merely passed on to the solicitors the decision already taken by Mr Roberts.
27. In determining the nature of Mr Roberts action in causing the Applicant's legal assistance to be suspended, I find that it is significant that he did not seek the authority of his Branch Committee before taking the action he did. This is

surprising for two reasons. First, I was told that the issue of the ASU was raised at every monthly meeting of the Branch Committee. Secondly, after receipt of the Applicant's confirmation of her continuing membership of the Union, Mr Roberts decided that her suspension could not be lifted without the authority of the Branch Committee. The Branch Committee was not due to meet for a further four weeks and therefore the effect of this decision was to extend the period of suspension of the Applicant's legal assistance by four weeks. Most significantly, however, Mr Roberts failed to inform the Applicant of the suspension of her legal assistance. It was left to the Applicant to discover this for herself some four months after the suspension had been imposed. It is unknown how long the suspension would have lasted had she not taken this initiative and subsequently complained as vociferously as she did. Mr Roberts' explanation for this failure was pressure of work. He maintains that it was a genuine oversight. I do not accept that explanation. I take into account Mr Roberts' own evidence that putting someone's legal assistance on hold is a serious matter. I also take into account Mr Roberts' well known opposition to the ASU and the personal attacks that the ASU had made upon him. I find that Mr Roberts was convinced that the Applicant was a member of the group of ASU members/supporters at the Shoreditch station who were allegedly behind the ASU's campaign in the London area. He retained this belief despite the Applicant's letter received on 17 April 2002, her subsequent denials and the lack of any hard supporting evidence. Indeed, Mr Roberts robustly expressed his continuing belief at the hearing. I take into account the nature of Mr Roberts' alleged investigations into the Applicant's position. Having suspended the Applicant's legal assistance it was incumbent upon him to investigate her position expeditiously and the most obvious first step would have been to put the allegations to her. He did not do so and his investigations, which had begun in April 2001, were still ongoing at the time the Applicant's benefit was reinstated in May 2002. I also find that Mr Roberts was heavily influenced by his understanding that another member with alleged connections with the ASU had left the Union shortly after receiving damages in a case brought with the Union's legal assistance. It is against this

background that Mr Roberts declared himself to be outraged when he heard on 8 October 2001 that the Applicant was in receipt of legal assistance.

28. Having regard to the whole of the facts in this case, I find on a balance of probabilities that Mr Roberts decided to suspend the Applicant's legal assistance as a disciplinary penalty for her role in the affairs of the ASU, knowing that by neither informing her of the suspension nor pursuing his investigations with proper vigour, she would be disadvantaged indefinitely. Alternative courses of action were open to Mr Roberts. He is a very experienced lay official and was aware of section K of the rules. He could have reported his concerns to Membership Legal Services at Head Office for them to investigate. He could have approached the Applicant directly. He chose neither of these options but took a decision which had an immediate adverse impact on the Applicant. It caused an inevitable delay to the conclusion of her personal injury claim. In my judgement this was a deliberate imposition of a disciplinary penalty.
29. Under the rules of the Union a disciplinary penalty can only be imposed in accordance with section I of the rules and it is common ground that the suspension of the Applicant's legal assistance was not carried out in accordance with that section. I accordingly find that the suspension of the Applicant's legal assistance was carried out in breach of section I of the rules.
30. For the above reasons I make a declaration that UNISON breached section I of its rules in suspending the Applicant's legal assistance for the period 11 October 2001 to 14 May 2002.

### **Enforcement Order**

31. When I make a declaration I have a discretion under section 108B(3) of the 1992 Act to make an enforcement order. However, the Applicant's legal assistance has already been restored and I have confidence that no order is required to ensure that the Union take such steps as are appropriate with a

view to securing that such a breach does not occur in the future. For these reasons I consider that it would not be appropriate to make an enforcement order.

D Cockburn  
Certification Officer